

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEMORANDUM ORDER

At Wilmington this 9th day of April, 2003, having heard oral argument and having reviewed papers submitted in connection therewith;

IT IS ORDERED that the disputed claim language in United States Patent Nos. 5,697,536; 5,697,882; and 6,224,592, as identified by the above referenced parties, shall be construed as follows, consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit.¹

¹The court notes that claim construction is not final until judgment is entered. The parties apparently developed their claim construction with a focus on obtaining summary judgment of infringement or invalidity. If, on a more developed record, the court finds the current claim construction to be in error, the claims will be re-construed accordingly.

1. "Connector."

The court shall apply the ordinary definition of the word "connector." The word connect means "to bind or fasten together; join or unite; link[.]"² The word "connector," in terms of the '536 patent, shall be construed to mean "a structure that electrically links the electrode terminal to the high frequency power supply."

2. "Electrically Conducting Fluid Supply."

Consistent with the prosecution history, the phrase "electrically conducting fluid supply" shall be construed to mean "a medical container that stores electrically conducting fluid." (D.I. 267, Ex. 10 at 4-5) An example of a medical container is an IV bag. An example of electrically conducting fluid is isotonic saline. (Id.)

4. "Spacing a Return Electrode Away From the Body Structure" and "the Return Electrode is Not in Contact with the Body Structure."

The claim limitation "the return electrode is not in contact with the body structure" is clear - the return electrode is not to contact the body at all during the performance of the claimed method.

²The Random House College Dictionary, 285 (revised ed. 1980).

5. **"Electrically Conducting Fluid" and "Electrically Conductive Fluid."**

Consistent with the ordinary definition, "electrically conducting fluid" and "electrically conductive fluid" shall be construed to mean "any fluid that facilitates the passage of electrical current." Examples of electrically conducting fluids are blood and saline.

6. **"Directing or Delivering the Electrically Conductive Fluid to the Target Site."**

This phrase shall be construed consistent with its ordinary meaning; no further construction is necessary.

7. **"Electrode Terminal."**

Consistent with the intrinsic evidence of the patents in suit, "electrode terminal" means "one or more active electrodes."

8. **"Active Electrode."**

The court shall apply the ordinary definition of the term "active electrode" in the relevant art. The term "active electrode" means "a stimulating electrode . . . applied to tissue for stimulation and distinguished from [a return electrode] by having a smaller area of contact, thus affording a higher current density."³

³The New IEEE Standard Dictionary of Electrical and Electronics Terms, 13 (5th ed. 1993).

9. "Return Electrode."

As contrasted with an active electrode, the term "return electrode" means "an electrode having a larger area of contact than an active electrode, thus affording a lower current density."⁴

10. "Insulating Member."

The court shall apply the ordinary definition of the phrase "insulating member." Thus, the phrase "insulating member" shall be construed to mean "a member which provides a high degree of resistance to the passage of charge."

11. "500 to 1400 Volts Peak to Peak."

This phrase shall be construed consistent with its ordinary meaning; no further construction is necessary.

12. "Through the Region of the Target Site."

This phrase shall be construed consistent with its ordinary meaning; no further construction is necessary.

13. "Immersing."

The court shall apply the ordinary definition of the term "immersing." The term "immersing" shall be construed to mean "to plunge into or place under a fluid[.]"⁵

⁴The court notes that the area of contact in the present invention contacts the electrically conductive fluid. In the prior art, the area of contact contacted the body.

⁵The Random House College Dictionary, 664 (revised ed. 1980).

14. "Electrosurgical System."

The court shall apply the ordinary definition of the term "system." The term "system" shall be construed to mean "an assemblage or combination of things or parts forming a unitary whole[.]"⁶

15. "Distal End" and "Proximal End."

The court shall apply the ordinary definition of the terms "distal" and "proximal." The term "distal end" shall be construed to mean "the end situated away from the point of origin or attachment."⁷ The term "proximal end" shall be construed to mean "the end situated toward the point of origin or attachment."⁸



United States District Judge

⁶See The Random House College Dictionary, 1335 (revised ed. 1980).

⁷See The Random House College Dictionary, 385 (revised ed. 1980).

⁸See The Random House College Dictionary, 1066 (revised ed. 1980).

